UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

In re: **655 CORPORATION,** Debtor.	Chapter 11 Case No. 06-13020-JNF

OPPOSITION OF NEW ENGLAND PHOENIX CO., INC. TO DEBTOR'S MOTION FOR AN ORDER (A) AUTHORIZING POSTPETITION FINANCING ON A PRIORITY SECURED BASIS; (B) SCHEDULING HEARING ON FINANCING; AND (C) GRANTING RELATED RELIEF

New England Phoenix Co., Inc. ("NEPCO"), a secured creditor of the Debtor, hereby opposes the relief requested in the Debtor's Motion for An Order (A) Authorizing Postpetition Financing On A Priority Secured Basis; (B) Scheduling Final Hearing On Financing; and (c) Granting Related Relief (the "Motion"). The Court should deny the Motion because, among other things, the Debtor has failed to establish how the proposed financing is in the best interests of the estate and its creditors. To the contrary, it is apparent from the pleadings filed to date that the sole purpose of this bankruptcy is meant to benefit LBM Financial LLC ("LBM") and that there is little, if any, likelihood that other creditors, particularly unsecured creditors, will derive any benefit from this financing or this bankruptcy. In addition, NEPCO opposes the Motion because: (i) it does not accurately reflect NEPCO's interest in the premises known as and numbered 653-59 East 2nd Street, South Boston, Massachusetts (the "Property"); and (ii) the proposed relief should be clarified to reflect that any proposed financing would be subject to NEPCO's secured position in the Property once that determination is made by a court of competent jurisdiction related to the mortgages held by NEPCO on the Property. In further support of this limited opposition, NEPCO states as follows:

Background: NEPCO's Interest In the Property

1. NEPCO and the Debtor are parties to two proceedings pending in the Land Court for the Commonwealth of Massachusetts. Both arise from the recording of fraudulent mortgage discharges on mortgages held by NEPCO.

2. NEPCO is the holder of two commercial promissory notes in the principal amounts of $100,000 and $600,000 (the "Notes"). 655 Corporation is a guarantor of both Notes. To secure its obligations under its guaranties, the Debtor executed two Mortgages and Security Agreements pertaining to the Property listed on Title No. 114024, issued by the Suffolk Registry District of the Land Court, as Document Nos. 603946 and 603947.

3. The Notes are both in default for non-payment of the amounts due thereunder, which sums were due and payable within eighteen months from their dates of execution, or by March 5, 2002. The Debtor has not satisfied its obligations under its guaranties of the Notes. As of today, the total principal amount owed to NEPCO under the Notes is approximately $600,000.00.

4. Notwithstanding the foregoing, on January 26, 2006, someone caused to be registered with the Suffolk District of Land Court a Discharge of Mortgage and Security Agreement (the "Discharge") and a Partial Release of Mortgage and Security Agreement (the "Partial Release") which purported to discharge NEPCO's mortgages. The Discharge and Partial Release are forgeries. Absent the recording of the forged Discharge and Partial Release, NEPCO's Mortgages and Security Agreements would prime the other alleged secured creditors identified by the Debtor, Cathay Bank, LBM and National Lumber.

5. Upon learning of the fraud, NEPCO commenced the matter entitled *New England Phoenix Co., Inc. v. 655 Corporation,* Land Court Department of the Trial Court, Commonwealth of Massachusetts C.A. No. 318987 (the "First Land Court Action") on February 14, 2006.

6. In the First Land Court Action, NEPCO has requested the fraudulent mortgage discharges be expunged from Certificate of Title No. 114024 filed with the Suffolk Registry of Land Court, and the $100,000 Mortgage and the $600,000 Mortgage be reinstated.

7. In connection with the Verified Complaint, NEPCO filed a Motion for Approval of Memorandum of Lis Pendens, which the Land Court allowed on February 14, 2006. The Memorandum of Lis Pendens is registered with the Suffolk District Registry of the Land Court as Document No. 715939 on Certificate of Title No. 114024. The Land Court has defaulted the Debtor in the First Land Court Action.

8. On June 8, 2006, NEPCO also commenced a procedure unique to the Land Court, an S Petition proceeding, entitled *New England Phoenix Co., Inc. v. 655 Corporation et al.,* Land Court Department of the Trial Court, Commonwealth of Massachusetts C.A. No. 06 SBQ 17427 06-001 (the "Second Land Court Action"). The Second Land Court Action is necessary to expunge the fraudulent mortgage discharges from the Certificate of Title No. 114024 under the rules and procedures of the Land Court.

9. The Land Court, (Piper, J.), conducted a hearing on the Motion to Vacate on August 31, 2006. Following argument,[1] the Land Court ruled that the issues and relief sought in both the First and Second Land Court actions were limited to the authenticity of the Discharge and Partial

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[1] At the hearing, the Debtor was represented by current bankruptcy counsel.

Release.[2] The Land Court went on to state, "I will deny the [Motion to Vacate] for lifting of the default and make a finding that there has been neglect that is not excusable and that is far in excess of the kind of neglect which would justify lifting a default but, more importantly, with the issues narrowed as I've outlined, ***I conclude that there has been no showing at all of the promise of an adequate defense which would justify the lifting of the default...*** " The Court then stated "[t]he next step then would be for you to make a motion for judgment by default limited to [the invalidity of the Discharge and Partial Release], and to put together affidavits and other appropriate evidentiary material on which I could make a determination that default judgment should enter and you could submit a proposed form of judgment by default that I will enter both in this case and the related S-case and once I have that submitted I'll act on it."[3] Id.

Argument

A. Debtor Has Failed To Establish That The Financing Is In The Best Interests of the Estate.

10. In the context of approving DIP financing, bankruptcy courts recognize that lenders often exact favorable terms that may or may not have the effect of causing harm to the estate and creditors. *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (9th Cir. BAP 1992), citing *Ames Department Stores,* 115 B.R. at 38; *In re Tenney Village Co., Inc.*, 104 B.R. 562, 567-570 (Bankr.D.N.H.1989). As the court in *Defender Drug Stores* pointed out,

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[2] The Land Court recorded the parties' arguments and the Court's ruling on August 31, 2006. NEPCO obtained a copy of the audio from the hearing in the CD format provided by the Land Court and will make it available to the Court if the Court so desires. In the interim, a portion of the transcript of the Judge Piper's ruling is attached as Exhibit C.

[3] In response to a question from Debtor's Counsel regarding 655 Corp.'s contention that the $100,000 Note and the $600,000 note had been satisfied, the Land Court also stated "[a]ll those issues about the nature, the amount, the terms, the satisfaction or not of the underlying obligations secured by those mortgages are not going to be part of the judgment and I will go to some effort to make sure the judgment is clear on that point and without prejudice [to] that issue being litigated in a subsequent proceeding...." Id.

> [w]hile certain favorable terms may be permitted as a reasonable exercise of the debtor's business judgment, bankruptcy courts do not allow terms in financing arrangements that convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender. Thus, courts look to whether the proposed terms would prejudice the powers and rights that the Code confers for the benefit of all creditors and leverage the Chapter 11 process by granting the lender excessive control over the debtor or its assets as to unduly prejudice the rights of other parties in interest. The bankruptcy court cannot, under the guise of Section 364, approve financing arrangements that amount to a plan of reorganization but evade confirmation requirements.

Defender Drug Stores, 145 B.R. at 317; *see also Ames Department Stores,* 115 B.R. at 40 (noting that "the court's discretion under Section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest").

11. The Bankruptcy Court in *Farmland Industries*, 294 B.R 855 (Bankr. W.D. Mo. 2003), after reviewing the factors considered by other courts in connection with DIP financing, "synthesized" them into the following five factors:

> 1. That the proposed financing is an exercise of sound and reasonable business judgment;
>
> 2. That the financing is in the best interests of the estate and its creditors;
>
> 3. That the credit transaction is necessary to preserve the assets of the estate, and is necessary, essential, and appropriate for the continued operation of the Debtors' businesses;
>
> 4. That the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender; and
>
> 5. That the financing agreement was negotiated in good faith and at arm's length between the Debtor, on the one hand, and the Lender, on the other hand.
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> *Farmland,* 294 B.R. at 881.

12. In this case, the Debtor has not adequately shown how the estate will benefit from the proposed financing. At best, the justification articulated by the Debtor – that it believes it can generate sales of approximately $10.5 million if the financing is permitted -- is misguided.

13. Prior to its bankruptcy and the current downturn in real estate and condominium prices in this area, the Debtor previously marketed and entered into purchase and sale agreements pertaining to the Property in or about May, 2005. Attached as Exhibits A and B are true and accurate copies of an Affidavit of Barry L. Queen, (an officer and director of the Debtor), and Condominium Purchase and Sale Agreement dated May 4, 2005, which document the purported sales prices of half of condominium units over a year ago.

14. Based upon the sales information Mr. Queen previously supplied, the average sale price for the Debtor's condominiums is approximately $392,555 which would generate a gross sale price of $7,065,990, or $3.5 million dollars less than what the Debtor currently projects. At best, the Debtor's current estimates appear to be overly optimistic. Before approving any financing, the Debtor should be required to establish the basis for its new estimates, especially given current real estate market conditions. Absent more detailed information, including a disclosure of the terms of an intercreditor agreement between Cathay Bank and LBM regarding disposition of condominium sale proceeds, the Debtor has not and cannot show how anyone other than LBM will be benefited by the proposed financing.

15. In addition to the foregoing, the Debtor appears to indicate that it believes that NEPCO is not a creditor. For the reasons set forth above, NEPCO believes that the Debtor's characterization of NEPCO's claim and interest in the Property is inaccurate and, therefore, files this opposition to preserve its claims and interests in the Property. Moreover, the Motion fails to show how the Debtor proposes to afford NEPCO adequate protection.

16. Lastly, to the extent that the Court is inclined to grant the Motion, any such order approving the Motion should provide that the lien on the Property in favor of LBM would junior

to NEPCO's secured position in the Property once that determination is made by a court of competent jurisdiction related to the mortgages held by NEPCO on the Property.

NEW ENGLAND PHOENIX CO., INC.,

By its Attorneys

/s/ John C. La Liberte

Frank J. Bailey, BBO# 026485
John C. La Liberte, BBO# 556046
Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110
(617) 646-2000

EXHIBIT "A"

EXHIBIT I

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT
C.A. No.: 05-771

PATRICIA KELLY,
Plaintiff

v.

FRANCIS K. FRAINE, 320 CORPORATION, ADAM CORPORATION, ON BROADWAY CORPORATION, 655 CORPORATION, CITY-SCAPES LIMITED PARTNERSHIP, BERNARD LAVERTY & SOS REALTY, LLC,
Defendants

AFFIDAVIT OF BARRY L. QUEEN

The undersigned makes this affidavit with personal knowledge of all facts contained herein and specifically in support of an Emergency Motion for Modification or Rehearing on Preliminary Order and Opposition to Plaintiff's Motion for Entry of Preliminary Injunction As To SOS Realty, LLC:

1. I am an individual residing at 958 Salem End Street, Framingham, Massachusetts.

2. With regard to i) defendant 320 Corporation, I am Vice President and Director; and ii) defendant City-Scapes Limited Partnership ("City-Scapes"), I am a limited partner; and represent as follows:

a) The limited partners of City-Scapes are myself, Patrick Steriti and Bernard J. Laverty, Jr.

b) Defendant Fraine holds no direct or indirect interest, contingent or otherwise, in 320 Corporation and City-Scapes.

c) Currently, there are three (3) sales pending of condominium units owned by City-Scapes, two (2) of which are affordable housing units. See Purchase and Sales Agreements attached hereto as Exhibit A-1 through A-3.

d) All of the net proceeds, after expenses of sales, from the sales of these units are being applied to existing mortgage loan obligations.

e) City-Scapes is now in default of the terms of its mortgage loan obligations.

3. With regard to defendant 655 Corporation ("655"), I am Vice President and Director, and represent and follows:

a) The stockholders of 655 are myself, Paul T. Prew, Trustee and Bernard J. Laverty, Jr.

b) Defendant Fraine holds no direct or indirect interest, contingent or otherwise, in 655.

c) Currently, there are nine (9) sales pending of condominium units owned by 655, two (2) of which are affordable housing units. See Closing Status List attached hereto as Exhibit B.

d) All of the net proceeds, after expenses of sales, from the sales of these units are being applied to existing mortgage loan obligations.

e) 655 is now in default of the terms of its mortgage loan obligations.

4. With regard to defendant SOS Realty, LLC ("SOS"), I am a member, and represent as follows:

a) The members of SOS are myself, Richard L. Sharp and Bernard J. Laverty, Jr.

b) Defendant Fraine has never held any direct or indirect interest, contingent or otherwise, in SOS.

c) Currently, there are fourteen (14) sales pending of condominium units owned by SOS Realty, two (2) of which are affordable housing units. See Reservation and Sales Status attached hereto as Exhibit C.

d) All of the net proceeds, after expenses of sales, from the sales of these units are being applied to existing mortgage loan obligations.

e) SOS will be in default of the terms of its mortgage loan obligations should it be prevented from completing the sales of these units.

Signed under the pains and penalties of perjury this 6th day of July , 2005.

Barry L. Queen

Suffolk,ss July 6 , 2005

On this day, before me, the undersigned notary public, personally appeared Barry L. Queen proved to me through satisfactory evidence of identification, which was his Massachusetts Driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Vincent J. DiMento, Notary Public
My commission expires September 18, 2009

VINCENT J. DIMENTO
MY COMM. EXPIRES SEPT. 18, 2009
COMMONWEALTH OF MASSACHUSETTS
NOTARY PUBLIC

EXHIBIT B

CHANNEL EDGE CLOSING STATUS LIST

Updated: 6/29/2005/1:57 PM

# UNIT	UNIT PRICE	BUYER	BUYER'S ATTORNEY	CLOSING DATE	MISC. ISSUES	STATUS
102	432.5k	Kimberly A. Morin	William A. Bibbo 1 State Street Boston, MA 02109 T: 617-523-0176 F: 617-523-7616 Email: wabibbo@bibbolaw. com	**07/29/05**	Parking Space #2	**P&S Signed**
103	405k	John Maffei & Alisa Maffei	George Warshaw 143 Newbury Street 5th Floor Boston, MA 02116 617-262-7800 Email: Gwarshaw@warshawlaw.com	**08/26/05**	Parking Space #3	**P&S signed**
202	428k	Bryan M. Bannon	John R. Souza, Esq. Email: Jr5352@aol.com	**07/29/05**	Parking Space #16	**P&S signed**
203	420k	Maureen Cavanagh	Jack Silverstein T:508-587-0142 x 205 Cell:508-246-2667 F:508-588-2667 Mary Anne C. Brown, Paralegal Bokavich & Kellecher, LLC 1076 Washington St. Hanover, MA 02339 T: 781-829-4401	**08/15/05**	Parking Space #7	**P&S signed**

CHANNEL EDGE CLOSING STATUS LIST

Updated: 6/29/2005/1:57 PM

# UNIT	UNIT PRICE	BUYER	BUYER'S ATTORNEY	CLOSING DATE	MISC. ISSUES	STATUS
			F: 781-829-0158 Email: mbrown@bokavichandkelleher.com			
204	539k	Yauvan Kumar	Beth Azero, Esq. Email: bazero@nigrolaw.com Daniel J. Nigro, Esq. 304 Turnpike Road Southborough, MA 01772 T:508-485-7005 F:508-485-7047 Lender's Counsel: Monica Yancey, Paralegal Scott D. Kriss, Esq. 60 Austin St., Suite 202 Newtonville, MA 02460 T: 617-964-3788 F: 617-964-3789	07/15/05	Parking Space #1	P&S Signed.
209	404k	Jason A. Diaz & Amy J. Diaz	Kostas Ligris, Esq. 27 Harvard Street Brookline, MA 02445 T: 617-797-0052 F: 617-670-10525 Email: kligris@ligris.com	07/29/05	Parking Space #45	P&S signed

CHANNEL EDGE CLOSING STATUS LIST

Updated: 6/29/2005/1:57 PM

# UNIT	UNIT PRICE	BUYER	BUYER'S ATTORNEY	CLOSING DATE	MISC. ISSUES	STATUS
205	465K	Shawn Brundage	TBD	**08/25/05**	Parking Space #14	**P&S signed**
105	220K	Affordable TBD	TBD	**10/15/05**	None	
109	220K	Affordable TBD	TBD	**10/15/05**	None	

EXHIBIT "B"

From the Office of:

Stuart H. Sojcher, Esq.
229 Berkeley Street
Boston, MA 02116
(617) 267-1177
Fax: (617) 267-7711

CONDOMINIUM PURCHASE AND SALE AGREEMENT

As of the 4th day of MAY 2005

1. PARTIES

655 Corporation, a Massachusetts corporation, hereinafter called the Seller, agrees to SELL, and Kimberly A. Morin, hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

2. DESCRIPTION

Unit No. 102 (the "Unit") of the Channel Edge Condominium (the "Condominium") created pursuant to Chapter 183A of the Massachusetts General Laws (the "Act") by Master Deed dated , and recorded with the Suffolk District of the Land Court as Document No._____ (the "Master Deed"), together with (a) an undivided 4.75% interest in both the common areas and facilities of the Condominium and the organization of unit owners through which the Condominium is managed and regulated, (b) the exclusive right to use a storage space labeled 102, assigned to the Unit, (c) the exclusive right to use a parking spot known and numbered as Parking Spot 2; and (d) such other rights and easements appurtenant to the Unit as may be set forth in any document governing the operation of the Condominium, including without limitation the Master Deed, the By-Laws of the organization of unit owners, and any administrative rules and regulations adopted pursuant thereto (all of which are hereinafter referred to as the "Condominium Documents"). The above-described premises are those conveyed to the SELLER by deed filed with the Suffolk Registry District of the Land Court on January 12, 1999, as Document No. 577732.

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

Included in the sale as a part of the Unit are the fixtures belonging to the SELLER and used in connection therewith. The extent to which any of such fixtures belong to the SELLER may be governed in part by provisions contained in the Condominium Documents.

4. TITLE DEED

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven calendar days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except

(a) Provisions of existing building and zoning laws;

(b) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;

(c) Any liens for municipal betterments assessed after the date of this agreement;

(d) The provisions of the Act and the Condominium Documents including without limitation all obligations of the unit owners to pay a proportionate share of the common expenses of the Condominium*;

(e) All restrictions, easements and encumbrances referred to in the Condominium Documents*;

(f) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises for residential purposes.

Buyer shall be given prompt notice of any changes, additions, or deletions in the condominium documents and will have seven (7) days thereafter to review, and if applicable, accept such changes.

5. PLANS

If said deed refers to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording registration.

6. REGISTERED TITLE

In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title of said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable the BUYER to obtain such Certificate of Title.

7. PURCHASE PRICE

The agreed purchase price for said premises is Four Hundred Thirty-Two Thousand Five Hundred and 00/100 Dollars ($432,500.00) Dollars of which

$ 9,812.50	have been paid as a deposit this day; and
$ 1,000.00	were previously paid to bind the Offer to Purchase; and
$421,687.50	are to be paid at the time of the delivery of the deed in cash, or by certified, cashiers, treasurer's or bank check(s), or closing attorney's conveyancing check.
$	
$432,500.00	TOTAL

8. TIME FOR PERFORMANCE; DELIVERY OF DEED

Such deed is to be delivered at 12:00 o'clock P. M. on the 29th day of July 2005 at the Suffolk County Registry of Deeds, or at the office of the attorney for the BUYER's mortgagee, unless otherwise agreed upon in writing. It is agreed that the time is of the essence of this agreement. Unless the deed and other documents required by this Agreement are recorded at the time for performance, all documents and funds are to be held in escrow, pending prompt rundown of the title and recording. The BUYER's lender's attorney or other escrow agent shall disburse funds the next business day following the date for performance, provided that the recording attorney has not reported a problem outside the recording attorney's control.

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9. POSSESSION AND CONDITION OF PREMISES

Full possession of said premises free of all tenants and occupants is to be delivered at the time of the delivery of the deed, said premises to be then (a) as represented to Buyer by the plans and specifications provided to Buyer outlining the new construction as shown in Exhibits C-1, C-2 and C-3 attached hereto and made apart hereof, and (b) not in violation of said building and zoning laws and (c) in compliance with provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled to an inspection of said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM

If the SELLER shall be unable to give title or to make conveyance, or to deliver the possession of the premises, all as herein stipulated, or if at the time of delivery of the deed the premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event ~~the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon~~ the time for performance hereof shall be automatically extended for a period not to exceed thirty (30) days except that if BUYER's mortgage commitment expires or the terms thereof will materially and adversely change in fewer than thirty (30) days, the time for performance set forth in paragraph 8 hereof shall be extended to one (1) business day before expiration of said mortgage commitment.

11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the organization of Unit owners shall fail to agree, within the time period set forth in the Act, if applicable, to proceed with such repair or restoration as may be necessary for such purposes, or shall expressly agree not to proceed, or the holder of a mortgage on the Unit shall refuse to permit any insurance proceeds to be used for such purpose, then any payments made under this agreement shall be forthwith at the sole discretion of the Buyer refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto. Buyer may elect to wait to take title until the Unit conforms, in which case Seller shall, at closing, give Buyer a credit on the purchase price equal to the amount of any penalty or other additional costs assessed against or charged to Buyer by Buyer's lender only in order for Buyer to maintain and/or extend her mortgage commitment.

12. BUYER'S ELECTION TO ACCEPT TITLE

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefor the purchase price reduced by the sum of (a) an amount equal to the sums required to remove all mortgages, liens or encumbrances which secure the payment of money and (b) an amount sufficient to satisfy the terms and conditions precedent to closing, as set forth in this Agreement, and to make the Unit conform to the provisions hereof, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said premises shall have been damaged by fire or casualty insured against, by the organization of unit owners or by the SELLER, then the SELLER shall, on delivery of the deed, unless said premises have previously been restored to their former

condition, pay over or assign to the BUYER all amounts recovered or recoverable by the SELLER on account of such insurance, and give the BUYER a credit against the purchase price equal to any amounts otherwise so recoverable which are retained by the holder of a mortgage on the Unit, less any amount reasonably expended by the SELLER for any partial restoration. If any portion of the Premises shall have been taken by exercise of the power of eminent domain, Seller shall pay over or assign to Buyer, at the Closing, all awards recovered or recoverable on account of such taking, less any amounts reasonably expended by Seller in obtaining such award.

13. ACCEPTANCE OF DEED

The acceptance of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

14. USE OF MONEY TO CLEAR TITLE

To enable the SELLER to make conveyance as herein provided, the SELLER shall, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests or to make the Unit conform to the provisions hereof, provided that all instruments so procured are recorded simultaneously with the delivery of said deed or provided that the SELLER makes arrangements reasonably satisfactory to the BUYER for the recording of such instruments subsequent to the delivery of said deed, in accordance with local conveyancing practice. As used herein, "encumbrances or interests" shall include, without limitation, any unpaid taxes, municipal assessments, water charges, sewer rents, together with any interest and penalties thereon tot eh closing date, and any other liens and encumbrances which Seller is obliged to pay and discharge, whether by law or by agreement, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances.

15. INSURANCE

The SELLER represents that at the time of execution of this agreement, the organization of unit owners maintains insurance with respect to the Condominium as follows:

Type of Insurance	*Amount of Coverage*
Fire	**$ AS PRESENTLY INSURED**

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Until the delivery of the deed, the SELLER shall maintain any supplemental insurance now in effect covering the Unit itself and any fixtures therein. The risk of loss in and to the Unit shall remain vested In **the Seller until the Buyer accepts and records the Deed.**

16. EVIDENCE OF INSURANCE

At the time of the delivery of the deed, the SELLER shall deliver to the BUYER a certificate of the Condominium insurance referred to in clause 15 as then in effect. The procuring of any supplemental insurance shall be at the option and sole expense of the BUYER.

17. ADJUSTMENTS

~~Water and sewer use charges,~~ taxes for the then current year and common expenses shall be apportioned

~~and fuel value shall be adjusted,~~ as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed. The SELLER'S allocable share of any working capital reserve held by the organization of unit owners shall be assigned to the BUYER and there shall be no adjustment therefor.

18. ADJUSTMENT OF UNASSESSED AND ABATED TAXES

If the amount of said taxes is not known at the time of delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless otherwise agreed.

19. BROKER'S FEE

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A broker's fee for professional service of 4% of the purchase price is due from the SELLER to Jack Conway Real Estate and Peter McLaughlin (50/50 or 2% each), the Broker(s) herein, but only if, as and when the full purchase price is paid and the deed to the BUYER is duly recorded.

20. BROKER(S) WARRANTY

The Broker(s) named herein warrant(s) that the Broker(s) is (are) duly licensed as such by the Commonwealth of Massachusetts.

21. INTENTIONALLY DELETED

22. BUYER'S DEFAULT DAMAGES

If the BUYER shall fail to fulfill the BUYER'S agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages and this shall be the SELLER'S sole and exclusive remedy at law or in equity for the BUYER'S breach of this Agreement. The BUYER and the SELLER agree that in the event of default by the BUYER, the amount of damages suffered by the SELLER will not be easy to ascertain with certainty and therefore the BUYER and the SELLER agree that the amount of the BUYER's deposit represents a reasonable estimate of the damages likely to be suffered.

23. RELEASE BY SPOUSE

The SELLER'S spouse hereby agrees to join in said deed and to release and convey all statutory and other rights and interests in said premises.

24. BROKER AS PARTY

The Broker(s) named herein join(s) in this agreement and becomes(s) a party hereto, insofar as any provisions of this agreement expressly apply to the Broker(s), and to any amendments or modifications of such provisions to which the Broker(s) agree(s) in writing.

25. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, etc.

If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor shall any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

26. WARRANTIES AND REPRESENTATIONS

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER or the BROKER(s): NONE.

27. MORTGAGE CONTINGENCY CLAUSE

In order to help finance the acquisition of said premises, the BUYER shall apply for a conventional bank or other institutional mortgage loan of no more than $422,000.00, at prevailing rates, terms and conditions. If despite the BUYER's diligent efforts a commitment for such loan cannot be obtained on or before May 23, 2005, the BUYER may terminate this agreement by written notice to the SELLER(S) and/or the Broker(s), as agent for the SELLER, prior to the expiration of such time, whereupon any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto. The BUYER shall be deemed to have used diligent efforts to obtain such commitment if the BUYER submits to a bank or other institutional mortgage lender a complete mortgage loan application conforming to the foregoing provisions on or before May 23, 2005.

28. CONSTRUCTION OF AGREEMENT

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and ensures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it. Signatures transmitted by facsimile shall have the effect of original signatures.

29. LEAD PAINT LAW

The parties acknowledge that, under Massachusetts law, whenever a child or children under six years of age resides in any residential premises in which any paint, plaster or other accessible material contains dangerous levels of lead, the owner of said premises must remove or cover said paint, plaster or other material so as to make it inaccessible to children under six years of age.

30. SMOKE DETECTORS

The SELLER shall, at the time of the delivery of the deed, deliver a certificate from the fire department of the city or town in which said premises are located stating that said premises have been equipped with

approved smoke detectors in conformity with applicable law.

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31. ADDITIONAL PROVISIONS

At the time of the delivery of the deed, the SELLER shall deliver to the BUYER a statement from the Channel Edge Condominium Association in recordable form and setting forth, in accordance with Section 6(d) of the Act, that there are no outstanding common expenses assessed against the Unit as of said time.

SEE RIDER A, ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

SEE EXHIBITS A, B. C-1. C-2 and C-3 ATTACHED HERETO AND MADE APART HEREOF.

NOTICE: This is a legal document that creates binding obligations. If not understood, consult an attorney.

SELLER - 655 CORPORATION

By: Barry L. Queen, President
Barry L. Queen, President
by [signature] as Atty in Fact under POA for Jelke

Kimberly A. Morin
BUYER – Kimberly A. Morin

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RIDER A
TO
PURCHASE AND SALE AGREEMENT

May 4, 2005

SELLER(S): 655 Corporation

BUYER(S): Kimberly A. Morin

PREMISES: Unit 102, 655 East 2nd Street, South Boston, MA

C 32. Notices. All notices required by the terms of this Agreement shall be in writing and delivered by hand or mailed, certified mail, postage prepaid, or sent by Federal Express or another recognized overnight delivery service, or hand delivered with receipt, all delivery charges prepaid, or sent by telecopy with confirmation of successful transmission, addressed as follows:

if to Seller, to:
Stuart H. Sojcher, Esq.
229 Berkeley Street
Boston, MA 02116
Telephone: 617 267-1177
Facsimile: 617 267-7711
Email: sojcher@cs.com

if to Buyer, to:
William A. Bibbo, Esq.
1 State Street
Boston, MA 02109
Telephone: 617 523-0176
Facsimile: 617 523-7616
Email: wabibbo@bibbolaw.com

Any such notice shall be effective when so mailed or sent, provided that the same is received in the ordinary course at the address to which the same is sent in accordance with the foregoing paragraph. A notice from an attorney acting or purporting to act on behalf of his/her client(s) shall constitute notice from such attorney's client, provided such attorney is identified or is otherwise authorized to act on behalf of his client. Any party may notify the other parties by such notice of a change of address, in which case, such new address shall be employed for any subsequent mailings. In addition, it is agreed and understood that any amendment or extension related hereto, when signed by the Seller's attorney, Stuart H. Sojcher, shall have the same force and effect as if signed personally by the Seller, and the same shall have the same force and effect on behalf of the Buyer if signed by the Buyer's attorney.

35. From and after the date of this Agreement, Seller agrees to permit Buyer reasonable access to the Premises from time to time, at reasonable times and upon reasonable notice, for the purpose of making measurements, inspections and the like, and otherwise planning for occupancy thereof.

36. Buyer warrants and represents to Seller and Seller represents to Buyer that they have dealt with no broker or other person entitled to a broker's commission in connection with the negotiation or execution of this Agreement or the consummation of the transaction contemplated hereby other than Jack Conway Real Estate and Patriot Real Estate Group, Inc.. Both the Buyer and the Seller agree to hold the other harmless from and indemnify the other against all damages, claims, losses and liabilities, including, without implied limitation, reasonable attorneys' fees and expenses (which shall include all costs for administrative, paralegal and other support staff) incurred by the other, arising out of, and in connection with the failure of the representations and warranties referred to herein. The provisions of this Paragraph shall survive delivery of the deed.

37. All deposits made hereunder (collectively, the "Deposit") shall be delivered to, held and controlled, as set forth in Section 21 of this Agreement, by Jack Conway Real Estate, Seller's broker (for the purposes hereof, the "Escrow Agent"). The Escrow Agent will not be liable for any action or non-action taken in good faith in connection with the performance of its duties hereunder, but shall be liable only for his own willful default and bad faith. In the event of any dispute relating to the right of possession or the disposition of the Deposit, the Escrow Agent will be entitled to retain dominion and control over the same until such dispute shall have been settled by mutual agreement of Buyer and Seller with notice thereof given by or on behalf of both parties to Escrow Agent, whereupon the Deposit (and any interest) will be paid over in accordance with the mutual agreement of the parties; or, if such dispute is taken to a court of competent jurisdiction, the Deposit (and any interest) will be paid over into the custody of such court or otherwise paid over in accordance with the final order, decree or judgment of such court. In no event shall Escrow Agent be under any duty to institute or defend any such proceedings. Furthermore, in no event shall Escrow Agent be required to take any action requested by Seller or Buyer until indemnified to his reasonable satisfaction

by the party or parties requesting such action.

38. Buyer acknowledges and understands that there may be a future condominium assessment for which Buyer will be responsible for 4.75%, but no such assessment or assessments will be the result of failure or neglect of the Seller to provide premises in accordance with the plans and specifications provided to Buyer herein. This Paragraph shall survive delivery of the deed.

39. Seller agrees to execute any and all reasonable and customary closing documentation and affidavits, as requested by Buyer and/or Buyer's lender at the closing in connection with the sale of the Premises, including, but not limited to UFFI Affidavits, mechanic's lien affidavit, lead paint affidavit, and title insurance affidavit.

40. Seller's SS-4 number is 043446058.

41. Seller agrees to provide and assign to Buyer all existing warranties, if any, associated with the appliances and equipment of the Premises.

42. In the event of any conflict between any provision(s) in the first four pages of this Agreement and any provision(s) in this Rider, the provision(s) in the Rider shall control.

43. The Buyer agrees to make a two-month condominium fee payment at closing, representing the initial condominium capital reserve in the amount of $433.78 to fund the condominium trust. Such payment shall be made only to such person or persons who ~~are~~ authorized by the Condominium Documents of record both to receive such payment and to give a receipt therefore which will be valid as against the Condominium Association.

44. The Development of the Condominium. The Seller is the developer and owner of all of the rights in the premises consisting of the land, building and improvements situated at 655 East 2nd Street, South Boston, Suffolk County, Massachusetts that are required to establish the Condominium hereunder. The Seller intends to establish the Condominium within such premises, pursuant to the provisions of Massachusetts General Laws, Chapter 183A, by means of a Master Deed and Declaration of Trust to be recorded with the Suffolk County Registry of Deeds.

45. SELLER shall have, and hereby reserves, the right: (a) at any time before or after delivery of the deed hereunder to raise or lower the price of any or all unsold units (except the Unit which is the subject of this Agreement as long as the Unit is subject to this

Agreement); and (b) at any time cause to be made such changes or modifications in the Master Deed, Declaration of Trust and the other documents as SELLER shall deem necessary in order to meet requirements of applicable laws and governmental regulations, lending institutions and/or marketing considerations, provided, however, that no such change or modification shall materially alter the Unit Percentage or materially alter the size, layout, location or features of the Unit. Notwithstanding the limitations contained in the preceding sentence, it is specifically understood and agreed that alterations not materially and adversely affecting the BUYER or the Unit Percentage, or of the size, layout, location or features of the Unit or other areas or elements of the Condominium arising from any one or more exigencies or details of the construction, renovation or rehabilitation of the building and improvements comprising the Condominium shall not be construed to give rise to any claim by the BUYER that the SELLER is unable to give title, or to make conveyance, or to deliver possession of the Unit, or that the Unit or any other area, facility or portion of said Condominium building and improvements does not conform with the provisions hereof, all as herein stipulated, and, notwithstanding any such alterations, the BUYER shall accept delivery of the deed at the time of performance determined hereunder and shall perform all BUYER's obligations in connection herewith. Without limiting the generality of the foregoing (but subject to the foregoing provisions as to material alterations of the Unit Percentage, and the size, layout, location and features of the Unit, etc.), in the event that a new or amended condominium statute is enacted in Massachusetts before the recording of the Master Deed and Declaration of Trust, SELLER reserves the right in its sole discretion to revise or amend the Master Deed, Declaration of Trust or other documents or to substitute new documents in lieu thereof in order to comply with the requirements of such new or amended statute.

46. The SELLER shall have the right, both before and after delivery of the deed pursuant to this Purchase and Sale Agreement, to commence and continue construction work within the Condominium, but the SELLER shall protect and indemnify the BUYER against and from costs and mechanics' and materialmen's liens, if any, arising on account of such work done or contracted for by the SELLER. BUYER shall not be excused from accepting the deed on the Closing Date and otherwise performing the BUYER's obligations hereunder on account of any such work within the Condominium, and there shall be no reduction in or withholding from the balance of the purchase price to be paid to SELLER on the Closing Date on account thereof; provided that the Unit and the common areas of the building containing the Unit which provide access to the Unit (except for any items which appropriately should be completed after move-in of the initial occupants) are substantially completed and ready for occupancy on the Closing Date as aforesaid.

The provisions of the preceding paragraph shall survive delivery of the deed.

47. As the result of ongoing work on the Unit, other units and the common areas and facilities, the BUYER acknowledges that entry to the building in which the Unit is located (the "Building") may involve various hazards. The SELLER shall have the right to prohibit visits to the Unit by the BUYER and anyone claiming by, through or under the BUYER. In the event that the SELLER permits visits to the Unit prior to the Closing Date, the BUYER must make an appointment with the Broker at least forty-eight (48) hours prior to the visit. The BUYER must be accompanied by a representative of the SELLER. The BUYER, and all those claiming by, through and under the BUYER hereby agrees to release, and hereby releases the SELLER and the
SELLER's contractor, and all those claiming by, through and under the SELLER and the SELLER's contractor from any and all claims for personal injury and property damage to the BUYER and all those claiming by, through or under the BUYER resulting from the presence in the Building or on the SELLER's property, and all those claiming by, through or under the BUYER. Nothing contained in this Section shall be construed as to limit Buyer's rights under Section 35 hereof.

48. Adjustment of Taxes. Real estate taxes attributable to the Unit for the then current year (if the Unit has not yet been individually assessed as a condominium unit, real estate taxes attributable to the Unit will equal the Unit Percentage of the total real estate taxes owing on the entire premises which constitute the Condominium) shall be apportioned as of the day of performance of this Agreement and the amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable to the SELLER at the time of delivery of the Unit Deed; provided, however, that if the Closing occurs within 60 days prior to the date on which any installment of taxes is due to the City of Boston, the SELLER may elect to require that the tax adjustment so calculated plus the additional amount of taxes needed to pay in full the BUYER's pro rata share of such installment be paid by the BUYER to the SELLER who will then use such amounts to pay such installment when due. If the amount of said taxes is not known at the time of delivery of the Unit Deed, taxes shall be apportioned on the basis of the taxes assessed against the Unit or the premises constituting the Condominium, as the case may be, for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be

obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed. If the Unit has not been separately assessed for the tax fiscal year in which the Closing Date falls, the BUYER agrees to execute and deliver to SELLER on the Closing Date the form of Tax Letter Agreement attached hereto as Exhibit A and incorporated herein by this reference; similarly, the SELLER agrees that the SELLER will pay the pro rata share of any installment of real estate taxes assessed against the Condominium for all Units in the Condominium which the SELLER owns on the due date of any such installment.

49. This agreement supersedes any other agreement made by the parties hereto in connection with the transaction contemplated hereby.

50. The following Exhibits are attached hereto and incorporated herein by this reference:

Exhibit A - Tax Letter Agreement

SELLER:

655 Corporation,

BY: ______________________
Barry L. Queen, President
Hereunto duly authorized

____
BUYER: Kimberly A. Morin

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EXHIBIT "C"

TRANSCRIPTION OF LAND COURT HEARING ON AUGUST 31, 2006

. . .

JUDGE PIPER: Here's what I'm going to do. I'm going to accept what you've said as tantamount to a motion to amend the pleadings both in this case and the S-case to limit the relief sought just to a determination about the authenticity of the two challenged discharges and whether they are forgeries and to seek relief limited to the striking of those discharges and the reinstatement of the mortgages whose liens are reflected on the certificates and have been discharged by the challenged instrument and not to seek any further relief including relief related to a determination of the nature and the amounts of the obligations secured, whether there was some undertaking on the part of your client or its representatives to discharge it and the effect of the reinstatement of the mortgage on the relative priority of the mortgage as shown on the certificate. With that amendment to the pleadings in this case, and the related S-case, I will deny the motion for lifting of the default and make a finding that there has been neglect that is not excusable and that is far in excess of the kind of neglect which would justify lifting a default but more importantly with the issues narrowed as I've just outlined, I conclude that there has been no showing at all of the promise of an adequate defense which would justify the lifting of the default. The next step then would be for you to make a motion for judgment by default limited to the issues as I've just outlined them, and to put together affidavits and other appropriate evidentiary material on which I could make a determination that default judgment should enter and you could submit a proposed form of judgment by default that I will enter both in this case and the related S-case and once I have that submitted I'll act on it.

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CERTIFICATE OF SERVICE

I, John C. La Liberte, counsel to New England Phoenix Co., Inc., do hereby certify that on this 3rd day of November, 2006, I served copies of the foregoing pleading by first-class mail, postage pre-paid, upon the parties listed on the service list attached hereto, who were not served via ECF.

/s/ John C. La Liberte
John C. La Liberte

Service List 665 Corp Ch. 11 Case No. 06-13020 (Cathy Bank)	Allstate Painting Co., Inc. 34 Day Street Norwood, MA 02062
Boston Police Detail Billing Unit P.O. Box 191776 Boston, MA 02119	Boston Water & Sewer Commission 980 Harrison Avenue Boston, MA 02119
Buonasaro Construction Peter Buonasaro 1408 Providence Highway Norwood, MA 02062	C&C Tiling 55 Minot Street, Apt. 1 Boston, MA 02124
Colony Hardwar Supply 1188 Dorchester Avenue Boston, MA 02125	Curragh Construction 94 St. Marks Road Boston, MA 02124
Door Systems, Inc. 120 Alexander Street P.O. Box 511 Framingham, MA 01704	Extreme Plumbing Ernie Cito 256 Washington Street Boxford, MA 01921
Lemar Industries 171 Locke Drive Marlborough, MA 01752	Lynco Fire Protection Inc. 19 Grant Avenue Burlington, MA 01803
MA Waste Systems, LLC 300 Centre Street Holbrook, MA 02343	Marr Scaffolding One D Street Boston, MA 02127
National Lumber Rocky Carlino 71 Maple Street P.O. Box 9032 Mansfield, MA 02048	R&R Sales, Inc. 174 Hampton Street Boston, MA 02119
Richie's Insulation, Inc. 111 Old Bedford Road Westport, MA 02790	Sani-kan Portable Sanitation P.O. Box 16400 Rumford, RI 02916

Tristate Stone, Inc. 120 Southbridge Road P.O. Box 762 North Oxford, MA 01537	Tudor Plastering Fintan Murtagh 50 Bellevue Road Quincy, MA 02171
665 Corporation c/o Vincent J. DiMento 7 Faneuil Hall Marketplace Boston, MA 02109	John Fitzgerald Office of the US Trustee 10 Causeway Street Boston, MA 02222
Kathleen Rahbany Craig and Macauley, P.C. Federal Reserve Plaza 600 Atlantic Avenue Boston, MA 02210	John J. Monaghan, Esquire Holland & Knight LLP 10 St. James Avenue Boston, MA 02116